

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOHN BOUTTE,

Plaintiff,

No. C 07-5276 PJH

v.

ORDER OF DISMISSAL

BYRON J. BAHR, et al.,

Defendants.

On February 28, 2008, the court issued an order to show cause why plaintiff's claims should not be dismissed for failure to effect service of process pursuant to Federal Rule of Civil Procedure 4, plaintiff having failed to file the requisite proof of service with the court regarding service of the summons and complaint. Plaintiff was instructed to file any opposition to the order to show cause no later than March 10, 2008, or risk dismissal of his complaint. That deadline having passed more than one week ago, plaintiff still has yet to file any opposition or response.

When circumstances make such action appropriate, a district court may dismiss an action for failure to timely effect service of process. See Fed. R. Civ. P. 4. Here, plaintiff's failure to file a proof of service demonstrating timely service, and his further failure to file any response to the court's February 28 order establishing good cause for an extension of time for service, constitute circumstances warranting the court's dismissal of plaintiff's complaint pursuant to Rule 4(m). See Efaw v. Williams, 473 F.3d 1038, 1040-41 (9th Cir. 2007). Moreover, in view of plaintiff's wholesale failure to respond, the court concludes that any prejudice to plaintiff as a result of dismissal, is outweighed by the prejudice that the named but unserved defendants will suffer if the action is allowed to continue.

Accordingly, the complaint is DISMISSED. The dismissal is without prejudice.

IT IS SO ORDERED.

Dated: March 19, 2008



PHYLLIS J. HAMILTON
United States District Judge